IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

Bail Appl..No. 6793 of 2007()

O.R.NO. 5/2007 OF RANGE OFFICE, MANKULAM

PETITIONERS/ACCUSED

P.SUNDER RAJAN, S/O S.R.BHAGYAM,
AGED 64 YEARS, RESIDING AT 41/699,
ST. MARTINS CHURCH ROAD, PALARIVATTOM,
KOCHI-25.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS: STATE & COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. THE FOREST RANGE OFFICER,
MANKULAM.

BY SPECIAL PUBLIC PROSECUTOR (FORESTS) SRI. M.P. PRAKASH

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6793 of 2007

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Dated this the 13th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioner is the first accused. He, along with four others, faces allegations in a crime registered under Section 27 of the Kerala Forest Act. The other four have been arrested. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The crux of the allegations against the petitioner is that he had engaged accused 2 to 5 and others to undertake cultivation activities in a certain parcel of land. It is the case of the prosecution that a notification under Section 4 of the Kerala Forest Act has been published and steps have been initiated to declare the land in question to be a reserved forest. The petitioner, claiming right under Poonjar Kovilakam, has raised objections against the notification issued under Section 4 of the Act in a writ petition filed. That writ petition was dismissed

reserving the rights of the petitioner to raise all his contentions before the authorities constituted. A writ appeal has been preferred against the said order passed in the writ petition. That writ appeal is pending. An application has been filed to stay further proceedings in O.R. 5 of 2007. That application is also pending before the writ appeal court, it is submitted. In the mean time, the officials of the forest department found that this parcel of land has been made ready for cultivation. Trees standing in the property had been cut down. All these are revealed from the mahazar dt. 16.7.2007. The other four accused persons were arrested on 17.7.2007. They have been enlarged on bail.

3. The petitioner has various contentions to advance. According to him, the notification under Section 4 of the Kerala Forest Act is bad. At any rate, the petitioner was not actually present at the place where cutting of the trees took place. It is further pointed out that an earlier suit was filed and interim orders were passed by the Civil Court in favour of the petitioner. His conduct must be reckoned as bonafide in view of such order. The petitioner shall abide by any conditions that may be imposed. He may not be subjected to the undeserved trauma of arrest and detention, submits the learned counsel.

4. The learned Special Prosecutor (Forests) opposes the application. He submits that the totality of circumstances must impress upon the court the need to deal with the offence firmly. The extra ordinary equitable discretion under Section 438 Cr.P.C. may not be invoked in favour of the petitioner, it is submitted.

5. At this early stage of the proceedings, I shall carefully avoid any detailed discussion on merits about the acceptability of the allegation raised or the credibility of the data collected. Suffice it to say that on an anxious consideration of all the relevant inputs, I am satisfied that directions under Section 438 Cr.P.C. can and ought to be issued in favour of the petitioner, subject to appropriate terms and conditions.

6. In the result:

(1) This application is allowed.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioner shall surrender before the learned Magistrate on 20.11.2007 at 11 a.m. The learned Magistrate shall release the petitioner on regular bail on condition that he executes a bond for

Rs.1,00,000/- (Rupees one lakh only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(b) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 21.11.07 and 22.11.2007 and thereafter on all Mondays and Fridays between 10 a.m. and 12 noon for a period of one month and subsequently as and when directed by the Investigating Officer in writing to do so.

© The petitioner shall not enter the area covered by G.O.(P) No.25/07/F&WLD dt.16.5.2007 until further orders, without the prior permission of the learned Magistrate.

(d) If the petitioner does not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 20.11.07 and the police shall be at liberty thereafter to arrest the petitioner and deal with him in accordance with law.

(e) If the petitioner were arrested prior to his surrender on 20.11.2007 as directed in clause (1) above, he shall be released on bail on his executing a bond for Rs.1,00,000/- without any surety undertaking to appear before the learned Magistrate on 20.11.2007.

(R. BASANT)
Judge

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